

Exhibition Loan Agreement

Exhibitor	<i>[Insert full legal name, ABN and address of Exhibitor]</i>
Organiser	<i>[Insert full legal name, ABN and address of Organiser]</i>
Date of signing this Exhibition Loan Agreement	/ /

The parties agree to the loan of the Exhibition by the Organiser to the Exhibitor on the terms and conditions of this agreement.

Executed for the Organiser by its duly authorised representative:

Executed for the Exhibitor by its duly authorised representative:

.....

.....

Signature

Signature

.....
Name of representative
(Block letters)

.....
Name of representative
(Block letters)

.....
Title of representative
(Block letters)

.....
Title of representative
(Block letters)

1 Definitions

1.1 The following words have these meanings in this agreement, unless the contrary intention appears:

Adjustment has the same meaning as in the GST Law.

Adjustment Event has the same meaning as in the GST Law.

Adjustment Note has the same meaning as in the GST Law.

Advertising, Promotion and Support Material means the advertising, promotion and support material specified in **item 7 of schedule 1**.

Arrival Date means the arrival date specified in **item 4 of schedule 1**.

Business Day means a day on which banks open for general banking business in the capital city of the State in which the Venue is located, not being a Saturday or a Sunday.

Confidential Information means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this agreement that:

- (a) is designated by a party as confidential and is described in **Item 15 of schedule 1**;
- (b) is identified by notice in writing to the other party after the date of this agreement as confidential information for the purpose of this agreement; or
- (c) a party knows or ought to know is confidential.

Defaulting Party has the meaning given to it in **clause 19.2**.

Departure Date means the departure date specified in **item 4 of schedule 1**.

Dispute means any dispute, controversy, difference or claim between any of the parties as to:

- (a) the construction of this agreement;
- (b) the rights or obligations of a party under this agreement; and/or
- (c) any other matter arising out of or relating to this agreement including

any question regarding the existence, validity or termination of this agreement.

Exhibitor means the party so named on the front page of this agreement.

Evaluation Report is defined in **clause 9.1(c)**.

Excluded Information means Confidential Information which:

- (a) is in or becomes part of the public domain other than through breach of this agreement or an obligation of confidence owed to the party providing the Confidential Information;
- (b) the party receiving the Confidential Information can prove by contemporaneous written documentation was already known to it at the time of disclosure by the party providing the Confidential Information (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); and/or
- (c) the party receiving the Confidential Information acquires from a source other than the party providing the Confidential Information, where such source is entitled to disclose it.

Exhibition means the exhibition as described in **item 1 of schedule 1**.

Exhibition Period means that part of the Loan Period, specified in **item 4 of schedule 1**, during which the Exhibition is on public exhibition at the Venue.

Fee means the amounts specified in, or determined in accordance with, **item 6 of schedule 1**.

Financial Reporting Arrangements means the financial reporting arrangements specified in **item 6 of schedule 1**.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

GST Law has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Indemnifying Party has the meaning given to it in **clause 15.1**.

Intellectual Property Rights means all rights conferred under statute, common law and equity in and in relation to inventions, patents, patent applications, discoveries, registered and unregistered designs, registered and unregistered trade marks (including service marks), trade names, business names, logos and get-up, circuit layouts, confidential information (including trade secrets and know how), copyright and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

IP Restrictions means the Intellectual Property Right restrictions as described in **item 3 of schedule 1**.

Loan Period means the period of time between the Arrival Date and the Departure Date.

Merchandising Arrangements means the merchandising arrangements specified in **item 8 of schedule 1**.

Organiser means the party so named on the front page of this agreement.

Payment Schedule means the payment schedule specified in **item 6 of schedule 1**.

Personal Information means information or an opinion about an individual whose identity is reasonably ascertainable from that information.

Special Conditions means any special conditions as described in **annexure I**.

Sponsorship Guidelines means the sponsorship guidelines specified in **item 9 of schedule 1**.

Taxes and Tax means any and all present and future sales, use, personal, property, real property, value added, goods and services, GST, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties,

finer or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

Tax Invoice has the same meaning as in the GST Law.

Term has the meaning given to it in **clause 19.1**.

Venue means the location where the Exhibitor will have the Exhibition exhibited, as described in **item 2 of schedule 1**.

1.2 Interpretation

In this agreement, unless the contrary intention appears:

- (a) a reference to this agreement or another instrument includes any variation or replacement of either of them;
- (b) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of this agreement and a reference to this agreement includes a clause, schedule or annexure;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacement of any of them;
- (d) the singular includes the plural and vice versa;
- (e) each gender includes every other gender;
- (f) the word "person" includes a firm, body corporate, and unincorporated association or an authority;
- (g) a reference to a person includes a reference to a person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (h) a reference to a month is a calendar month;

- (i) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (j) the word "parties" means the signatories to this agreement;
- (k) unless otherwise specified, a reference to "AUD\$", "A\$", "\$A", "dollar, or "\$" is a reference to Australian currency; and
- (l) headings are inserted for convenience and do not affect the interpretation of this agreement.

1.3 To the extent that there is any inconsistency between the terms and conditions as set out in the body of this agreement and the terms and conditions as may be set out in any of the annexures to this agreement (including the Special Conditions), then unless the contrary intention expressly appears the terms and conditions of this agreement will prevail to the extent of such inconsistency.

2 Loan of the Exhibition

2.1 The Organiser will lend the Exhibition to the Exhibitor, and the Exhibitor will take and display the Exhibition at the Venue, for the Loan Period, upon and subject to the terms and conditions of this agreement, including any Special Conditions.

2.2 In consideration of the Organiser lending the Exhibition to the Exhibitor and allowing the Exhibitor to display the Exhibition for the Loan Period, the Exhibitor must:

- (a) pay to the Organiser the Fee in accordance with **clause 9**; and
- (b) display and maintain the Exhibition in accordance with the requirements of this agreement.

2.3 The Organiser warrants that:

- (a) it has the right to lend the Exhibition to the Exhibitor

on the terms and conditions of this agreement;

- (b) subject to **clause 2.4**, there is no infringement of Intellectual Property Rights arising out of the loan of the Exhibition to the Exhibitor or the use and display of the Exhibition at the Venue by the Exhibitor;
- (c) the Exhibition will be fit for the purposes for which the Exhibition is intended, as held out by the Organiser, to meet; and
- (d) any information contained in the Exhibition has been obtained and provided using due professional care and skill.

2.4 The Exhibitor acknowledges the IP Restrictions and undertakes to comply with the IP Restrictions during the Loan Period.

3 Responsibilities

The Exhibitor:

- (a) is responsible for the day to day management of the Exhibition whilst at the Venue, other than as specified in this agreement;
- (b) must not undertake any treatment or work on the Exhibition, or any component of the Exhibition, without the prior written consent of the Organiser;
- (c) may, in the event of emergency situations, take any reasonable action as is necessary to ensure the safety of the Exhibition, or any component of the Exhibition, and to that extent (and that extent only) may:
 - (i) act for and on behalf of the Organiser; and

- (ii) remove components of the Exhibition to a place of safekeeping, provided that the Exhibitor informs the Organiser at the earliest possible opportunity by telephone and in writing of the emergency situation;
- (d) must not use any part of the Exhibition, or related material, for commercial purposes other than as provided for under this agreement, without the prior written consent of the Organiser;
- (e) will allow the Organiser and its authorised agents access (at no charge) to the Venue at the Organiser's own cost at mutually agreed times during normal Venue operating hours; and
- (f) will allow the Organiser and its authorised agents access to the Venue at mutually agreed times outside of normal Venue operating hours, provided that:
 - (i) the Exhibitor is able to make the necessary arrangements to facilitate such access; and
 - (ii) the Organiser meets its own costs.

4 Delivery, Installation and Dismantling of the Exhibition

- 4.1 The Exhibitor and the Organiser must consult and, acting in good faith, use best endeavours to agree in a timely manner on:
- (a) the layout and plan of the Exhibition, based on floor, service and lighting plans for the Venue to be provided by the Exhibitor to the Organiser; and
 - (b) arranging any ancillary displays, signage or associated events in the Venue.

4.2 The parties agree to allocate responsibility, and be responsible for, the crating and packing and repacking material in accordance with **item 5 of schedule 1**. Dimensions, weights and special handling equipment requirements which the relevant party is required to comply with are detailed in **annexure B**.

4.3 The Organiser must:

- (a) ensure that the components of the Exhibition arrive at the Venue on the Arrival Date:
 - (i) in a condition suitable for public exhibition;
 - (ii) in good working order; and
 - (iii) in a condition and configuration which will allow them to be installed at the Venue;
- (b) provide to the Exhibitor in a timely manner a comprehensive list of specific requirements for the proper installation, and operation, of the Exhibition; and
- (c) subject to the Exhibitor complying with **clause 4.7**, arrange for the Exhibition to be removed, and ensure that the Exhibition is removed, from the Venue on the Departure Date.

4.4 The Exhibitor must:

- (a) provide secure and appropriate space to store packing cases, either on the Venue premises or at a mutually acceptable off-site store; and
- (b) ensure that the Venue has the services as described in **annexure C**.

4.5 In the event of a late delivery or pick up by the Organiser of the Exhibition, any additional expenditure reasonably incurred by the Exhibitor as a direct consequence of that late delivery

or pick up will be borne by the Organiser.

4.6 The Organiser will provide the number of representative(s) as specified in **annexure D** to coordinate the unpacking, installation, dismantling and repacking of the Exhibition at the Venue. The number of days allowed for installation, dismantling and repacking is specified in **annexure D**.

4.7 The Exhibitor must provide the services, equipment and personnel as detailed in **annexure D** to unload, unpack, install, dismantle, repack and reload the Exhibition.

4.8 If:

- (a) the Exhibitor fails to supply the services, equipment or personnel (as the case may be) as listed in **annexure C** and **annexure D** for the unpacking, installation, dismantling and repacking of the Exhibition; and
- (b) such failure results in a delay to the unpacking, installing, dismantling, repacking or reloading of the Exhibition (as the case may be),

then:

- (c) the Organiser may arrange for the relevant services, equipment or personnel (as the case may be) to be provided; and
- (d) the Exhibitor will be liable to meet all direct costs reasonably and properly incurred by the Organiser in providing those services, equipment or personnel (as the case may be).

4.9 Responsibilities in relation to the preparation of condition report forms for the components of the Exhibition are as follows:

- (a) condition report forms will be in the form as set out in **annexure E**;
- (b) the Organiser must provide the condition report form for all components of the Exhibition at the time of delivery of the Exhibition to the Venue;
- (c) the Exhibitor and the Organiser (if representatives have been provided in accordance with **clause 4.6**) must complete the condition report forms at the following times:
 - (i) immediately after unpacking of the Exhibition, after delivery to the Venue; and
 - (ii) immediately prior to the repacking of the Exhibition, prior to departure from the Venue; and
- (d) the Exhibitor must notify the Organiser of any material change in the condition of any component of the Exhibition immediately upon the Exhibitor becoming aware of such change.

5 Display and Maintenance

- 5.1 Subject to **clause 5.3(a)** and **clause 5.4**, the Organiser must ensure that each component of the Exhibition on display at the Venue is in full operational order and that all components are present to a standard suitable for public exhibition at the time of opening and maintained at this level throughout the Exhibition Period.
- 5.2 During the period that the Exhibition is being installed at the Venue, the Organiser will train staff nominated by the Exhibitor in the operation, routine maintenance and servicing of the Exhibition as detailed in **annexure F**.
- 5.3 Whilst the Exhibition is in the Venue:
 - (a) the Exhibitor is responsible for the daily checking of

maintenance of the Exhibition. The Exhibitor's maintenance obligations are set out in **Annexure F**; and

- (b) the Organiser is responsible for the specialised repair of components in the Exhibition.

- 5.4 The Exhibitor is responsible for keeping accurate records, using maintenance forms as prescribed in **annexure G**, of all day-to-day maintenance undertaken on the Exhibition and must not make any modification or alteration to the Exhibition without the prior written approval of the Organiser.
- 5.5 The Exhibitor must nominate a representative(s) as its official representative for the purposes of acting as the maintenance contact person for the Organiser. The representative nominated must be available for contact at the times specified in **item 12 of schedule 1**.

6 Security

- 6.1 The Exhibitor must provide 24 hour physical and/or electronic security of the Exhibition whilst it is at the Venue.
- 6.2 The Organiser is responsible for security arrangements for the Exhibition during its transportation to and from the Venue.

7 Environmental Conditions

The Exhibitor must ensure that the environment in which the Exhibition is placed during the Loan Period is maintained at the levels nominated in **annexure C**.

8 Risk and Insurance

- 8.1 The Exhibitor is responsible for any loss or damage which occurs to the Exhibition or any of its components during the Loan Period and must pay the Organiser any reasonable costs incurred by it in restoring the Exhibition or any component(s), as the case requires, as nearly as practicable to its or their condition, fair wear and tear excepted, when

first received by the Exhibitor at the Venue.

- 8.2 The Exhibitor must maintain adequate insurance to cover its own workers compensation liabilities, third party liabilities, and occupiers liability, in order to indemnify itself against any loss or damage it may suffer or cause during the Loan Period. The Exhibitor may act as its own insurer provided that this is notified in writing to the Organiser prior to execution of this agreement and is accepted as appropriate by the Organiser (acting reasonably).
- 8.3 Unless the Organiser expressly elects to maintain its own insurance coverage, the Exhibitor must insure the Exhibition for the amount indicated in **annexure A** against all customary risks of physical loss or damage from external cause during the Loan Period.
- 8.4 The Exhibitor must immediately advise the Organiser in writing, and transmit by facsimile, notification of any loss or damage suffered by the Exhibition or any of its components.
- 8.5 If the Organiser elects to maintain its own insurance under **clause 8.3** in relation to loss or damage to the Exhibition and its components during the Loan Period, the Organiser must provide the Exhibitor with a certificate of insurance naming the Exhibitor as an additional insured.
- 8.6 The Organiser is responsible for all transit insurance unless otherwise indicated in this agreement.
- 8.7 The Exhibitor must, upon the request of the Organiser, provide within 10 Business Days of the request evidence to the Organiser that it has taken out all of the insurances required by this **clause 8**.

9 Fee and GST

- 9.1 The Exhibitor must:

- (a) pay to the Organiser the Fee (and any relevant related amount on account of GST as determined in accordance with **clause 9.4**) in accordance with the Payment Schedule;
- (b) comply with the Financial Reporting Arrangements; and
- (c) within 30 days after the end of the Loan Period, provide to the Organiser an evaluation report containing the information specified in **annexure H ("Evaluation Report")**.
- 9.2 Subject to the remaining subclauses of this **clause 9**, the Fee is inclusive of all Taxes.
- 9.3 If GST has application to any supply made by the Organiser under or in connection with this agreement, the Organiser may, in addition to the consideration payable or to be provided for the supply, subject to the Organiser first issuing the relevant Tax Invoice, recover from the Exhibitor an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable or to be provided by the Exhibitor for the supply by the prevailing GST rate.
- 9.4 If it is determined on reasonable grounds that the amount of GST paid or payable by the Organiser on any supply made under or in connection with this agreement differs for any reason from the amount of GST recovered or recoverable from the Exhibitor, then the amount of GST recovered or recoverable from the Exhibitor shall be adjusted accordingly.
- 9.5 Where the amount of GST recovered or recoverable from the Exhibitor is adjusted pursuant to **clause 9.4** and this gives rise to an Adjustment from an Adjustment Event, the Organiser must provide an Adjustment Note to the Exhibitor.
- 9.6 If GST has any application to any supply made by the Exhibitor under or in connection with this agreement (including, without limitation, any supply in connection with the receipt by the Exhibitor of an indemnity payment under this agreement), the Exhibitor may, in addition to any amount or consideration expressed as payable or to be provided elsewhere in this agreement, recover from the Organiser an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable or to be provided by the Organiser for the relevant supply by the prevailing rate of GST.
- 9.7 If the Exhibitor is required to pay any withholding tax in respect of payments made, or required to be made, to the Organiser under this agreement, then the Organiser will be liable to pay to the Exhibitor the amount of such tax. The Exhibitor may deduct or set off any the amount of any such withholding tax against any amount the Exhibitor may owe to the Organiser under this agreement.
- 10 Advertising, Promotion and Support Material**
- 10.1 The Organiser must provide to the Exhibitor in a timely manner:
- (a) copies and details of the Advertising, Promotion and Support Material;
- (b) details of any Intellectual Property Rights associated with the Advertising, Promotion and Support Material; and
- (c) details of any payments due to be made to any person for use of any Intellectual Property Rights associated with the Advertising, Promotion and Support Material.
- 10.2 The Exhibitor must not, without the prior written approval of the Organiser:
- (a) alter the Advertising, Promotion and Support Material;
- (b) use the Advertising, Promotion and Support Material for any purpose other than for and in relation to the Exhibition; or
- (c) allow for the Exhibition to be photographed or video taped.
- 11 Merchandise**
- The parties will comply with the Merchandising Arrangements.
- 12 Sponsorship and Special Access**
- 12.1 The parties acknowledge and agree that the arrangements in respect of national sponsorship are as follows:
- (a) the national sponsors (if any) are as listed in **item 9 of schedule 1**;
- (b) the Organiser has sole discretion in relation to the manner in which national sponsorship funding is utilised;
- (c) the Exhibitor may arrange additional local sponsorship subject to prior written approval by the Organiser, which approval must not be unreasonably withheld or delayed; and
- (d) each party will be responsible for the matters as prescribed in **item 9 of schedule 1** in respect of the Sponsorship Guidelines.
- 12.2 Subject to **clause 12.3**, if, at the request of the Organiser, the Exhibitor provides access for special groups outside the normal hours of operation for the Venue, the Organiser must reimburse to the Exhibitor the direct costs (excluding any management overhead costs) incurred (and as substantiated) by the Exhibitor in respect of such special access.
- 12.3 The parties will comply with any special access requirements as may be prescribed in **item 13 of schedule 1**.

13 Organiser Acknowledgment

- 13.1 Unless otherwise agreed between the parties, the Organiser must be given clear acknowledgment as the provider of the Exhibition in all educational and promotional material, press releases, posters, banners or other advertising in the form as provided in item 10 of schedule 1
- 13.2 The Organiser must promptly provide necessary corporate identity material to enable the Exhibitor to meet production schedules of the Exhibitor including, without limitation, corporate logos and sponsors' logos.

14 Ownership and Possession

- 14.1 The Exhibitor acknowledges that the title to, and Intellectual Property Rights in respect of, the Exhibition vests and remains in the Organiser or relevant third party owner (as the case may be).
- 14.2 The Exhibitor must not convey, duplicate, transfer, assign, mortgage, pledge, lend or part with possession of the Exhibition, or any component of the Exhibition, except in accordance with the provisions of this agreement.
- 14.3 The Exhibitor must immediately deliver up possession of the Exhibition to the Organiser at the Venue on the Departure Date or, if this agreement terminates prior to the Departure Date, on the date of termination.
- 14.4 The Exhibitor will own any Intellectual Property Rights in the Evaluation Report submitted to the Organiser by the Exhibitor, provided that the Exhibitor grants an irrevocable royalty free licence to the Organiser to use any information as contained in the Evaluation Report as it relates to the Organiser's Exhibition.

15 Indemnity

- 15.1 Subject to clause 15.2 and 15.3 each party ("Indemnifying Party") will indemnify and keep

indemnified the other party and its officers, employees and agents (each an "Indemnified Party") from and against any loss or damage (including loss or damage to property), expense, liability or cost (including the cost of any settlement) incurred by an Indemnified Party (including incurred as a consequence of a third party claim) which arises from or is a consequence of :

- (a) any unlawful or negligent act or omission of the Indemnifying Party in connection with this Agreement;
- (b) any breach by the Indemnifying Party of any of its obligations or warranties under this Agreement; and/or
- (c) without limitation to clause 15.1(b), any use or disclosure by the Indemnifying Party of Personal Information in breach of clause 25.

- 15.2 The Indemnifying Party's liability under this clause 15 will be reduced proportionally to the extent that any negligent or unlawful act or omission or wilful misconduct of the other party contributed to the relevant loss, damage, expense or liability.
- 15.3 Neither party will be liable to the other party in any circumstances for any indirect, economic, special or consequential loss or damage, including but not limited to, loss of revenue, loss of production or loss of profit.

16 [Dispute Resolution

- 16.1 The parties acknowledge that it is their expectation that any Disputes will be settled by the parties in good faith. Subject to clause 16.5, before resorting to court proceedings, the parties must comply with the dispute resolution process set out in clause 16.2.
- 16.2 Any Dispute between the parties must be referred:
- (a) initially for resolution by a representative nominated

by each party, who the parties will procure to endeavour to resolve the dispute within 10 Business Days of the giving of notice of a Dispute by a party; and

- (b) if the Dispute is not resolved in accordance with clause 16.2(a), within the time specified in that clause, to the Chief Executive Officers of the respective parties who the parties will procure to endeavour to resolve the Dispute within a further 20 Business Days or such other period as may be agreed by those persons.

- 16.3 If the Dispute is not resolved by the parties in accordance with clause 16.2 within the time specified in that clause, then either party may, in its discretion, initiate court proceedings.
- 16.4 Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under this agreement, subject always to its rights of termination under this agreement.
- 16.5 A party may commence court proceedings relating to any Dispute at any time where that party seeks urgent interlocutory relief.

17 Force Majeure

- 17.1 Despite any other provision of this agreement, no party need act if it is impossible to act due to any cause beyond its control (including war, riot, natural disaster, labour dispute, or law taking effect after the date of this agreement). The non-performing party agrees to notify the other party promptly after it determines that it is unable to act.
- 17.2 No party has responsibility or liability for any loss or expense suffered or incurred by the other party as a result of its not acting

for so long as the impossibility under **clause 17.1** continues. However, the non-performing party agrees to make reasonable efforts to avoid or remove the cause of non-performance and agrees to continue performance under this agreement promptly when the causes are removed.

18 Confidentiality

- 18.1 No Confidential Information may be disclosed by the party receiving the Confidential Information to any person except:
- representatives of the party receiving the Confidential Information who require the information for the purposes of this agreement;
 - with the consent of the party who supplied the information, which consent may be given or withheld in its absolute discretion;
 - if the party receiving the Confidential Information is required to do so by law (including for public accountability purposes) or a stock exchange;
 - if the party receiving the Confidential Information is required to do so in connection with legal proceedings relating to this agreement; or
 - if the party receiving the Confidential Information is a Commonwealth or State agency, it may disclose such information on an as required basis to that party's responsible Minister.
- 18.2 Any party disclosing information under **clause 18.1(a) or (b)** must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in **clause 18.1**.
- 18.3 **Clauses 18.1 and 18.2** do not apply to the Excluded Information.
- 18.4 A party who has received Confidential Information from the

other party under this agreement must, on the request of the other party, immediately deliver to that party all documents or other materials containing or referring to that information which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from it under **clause 18.1(a) or (b)**.

- 18.5 A party may not make press or other announcements or releases relating to this agreement, or the transactions the subject of this agreement, without the approval of the other party to the form and manner of the announcement or release, unless and to the extent that the announcement or release is required to be made by the party by law or by a stock exchange.
- 18.6 Except as otherwise agreed or duly required by law or any regulatory authority, no party will disclose the terms of this agreement to any person other than its employees, accountants, auditors, financial advisers or legal advisers on a confidential basis.
- 18.7 This **clause 18** will survive termination (for whatever reason) of this agreement.

19 Term and Termination

- 19.1 This agreement will commence on the date of this agreement and, subject to earlier termination in accordance with this agreement, will continue until the Exhibitor has provided the Evaluation Report ("**Term**").
- 19.2 If either party ("**Defaulting Party**") is in breach of a material term of this agreement, the other of them may serve on the Defaulting Party a written notice specifying the default stating the intention of the other party to exercise its rights under this **clause 19**.
- 19.3 If:
- the default referred to in **clause 19.2** is not capable of remedy;
 - the Defaulting Party fails to remedy such default in a

proper manner within 30 days after the notice referred to in **clause 19.2** is received;

- the Defaulting Party fails within the period of 30 days referred to in **clause 19.3(b)** to provide adequate assurance that the default will be rectified within a reasonable time; or
 - the Defaulting Party gives such adequate assurance referred to in **clause 19.3(c)** but the default is not rectified within such reasonable time,
- then the other party may terminate this agreement.
- 19.4 Either party may terminate this agreement at any time by giving not less than 30 days' notice of termination to the other party, if that other party takes any action or any steps are taken or legal proceedings are started for:
- its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by the other party (which approval will not be unreasonably withheld); or
 - the appointment of a controller, administrator, official manager, trustee or similar officer of the other party or any of its revenues and assets.

- 19.5 Termination will be without prejudice to any rights of either party against the other which accrued prior to the time of termination or which otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this agreement which arose prior to the time of termination.

20 Notices

- 20.1 A notice, approval, consent or other communication that may or must be given under or in connection with this agreement must be:
- (a) in writing;
 - (b) marked in the case of a party to the attention of the person named in respect of that party in **item 11 of schedule 1**; and
 - (c) left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by e-mail to the e-mail address of the addressee or sent by facsimile to the facsimile number of the addressee which is specified in this clause or if the addressee notifies another address, e-mail address or facsimile number then to that address, e-mail address or facsimile number.
- 20.2 A notice, approval, consent or other communication takes effect from the time it is received unless a latter time is specified in it.
- 20.3 A letter, email or facsimile is taken to be received:
- (a) in the case of a posted letter, on the fifth day after it is posted (seventh if posted to or from a country other than the country from which it was sent);
 - (b) in the case of an email, on receipt of a successful delivery report by the machine from which the e-mail was sent; and
 - (c) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

21 Assignment

Neither party may assign [or subcontract] its rights under this agreement without the prior written consent of the other party.

22 Relationship of Parties

Save as expressly provided in this agreement, nothing in this agreement is or will be taken as constituting the relationship of partners or joint venturers between the parties to this agreement or otherwise sharing risks or rewards or constituting any party the agent or representative of another party.

23 Costs and Stamp Duty

- 23.1 Each party will bear its own costs arising out of:
- (a) the negotiation, preparation and execution of this agreement; and
 - (b) except as expressly provided otherwise in this agreement, any transaction contemplated by this agreement.
- 23.2 The Exhibitor must pay for stamp duty which may be payable in any relevant jurisdiction on or in connection with this agreement.

24 Governing law, jurisdiction and service of process

- 24.1 This agreement and the transactions contemplated by this agreement is governed by the law in force in the jurisdiction set out in **item 14 of schedule 1**.
- 24.2 Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the jurisdiction set out in **item 14 of schedule 1** and the courts of appeal from them for determining any dispute concerning this agreement or the transactions contemplated by this agreement. Each party waives any right it has to object to an action being brought in those courts including, but not limited to claiming that the action has been

brought in an inconvenient forum or that those courts do not have jurisdiction.

- 24.3 Without preventing any other mode of service, any document in an action (including, but not limited to any writ of summons or other originating process or any third party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under **clause 20**.

25 Privacy

If Confidential Information, or any other information, provided by one party to the other party under this agreement includes any Personal Information, the receiving party must:

- (a) where the receiving party is specifically bound by privacy laws or data protection laws which regulate the collection, storage, use and disclosure of information, comply with those laws;
- (b) where the receiving party is not specifically bound by privacy laws or data protection laws which regulate the collection, storage, use and disclosure of information, comply with all applicable such laws as may be in force from time to time as if it were subject to those laws;
- (c) comply with any privacy code or policy which has been adopted by the disclosing party (and disclosed to the receiving party) as if it were bound by that code or policy, other than to the extent such privacy code or policy is inconsistent with any privacy code, policy or law which the receiving party is bound by;
- (d) promptly notify the disclosing party of any complaint or investigation under, or relating to, any

of the laws, codes or policies referred to in **clauses 25(a), 25(b) and 25(c)**; and

- (e) co-operate with the disclosing party in the resolution of any such complaint or investigation.

26 Miscellaneous

Exercise of rights

26.1 A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

Waiver

26.2 A provision of or a right created under this agreement may not be:

- (a) waived except in writing signed by the party granting the waiver; or
- (b) varied except in writing signed by the parties.

Severability

26.3 If the whole or any part of a provision of this agreement is void,

unenforceable or illegal in the jurisdiction specified in **item 14 of schedule 1** it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

Entire Agreement

26.4 This agreement constitutes the entire agreement of the parties about their subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

Counterparts

26.5 This agreement may be signed in any number of counterparts. All of such counterparts taken together are deemed to constitute the one instrument.

Further assurances

26.6 Each party agrees, at its own expense, on the reasonable request of the other party to do everything reasonably necessary to give effect to this agreement (including the execution of documents) and to use all reasonable endeavours to cause

third parties to do likewise. Without limiting the meaning of this clause, each party must co-operate with and give all necessary assistance to any expert appointed under this agreement.

No merger

26.7 None of the terms of this agreement, or anything done under or by virtue of this agreement or any other agreement, instrument or document, or judgment or order of any Court or judicial proceeding will operate as a merger of any of the rights and remedies of the parties under this agreement and those rights and remedies will at all times continue in force.

Amendment

26.8 No amendment or variation of this agreement is valid or binding on a party unless made in writing executed by all parties.

Compliance

26.9 The parties undertake to each other to comply with all relevant laws governing this agreement.

Schedule 1

Item 1 - The Exhibition

A touring exhibition:

- (a) developed by [*insert details*];
- (b) the subject of [*insert details*]; and
- (c) which comprises [*insert description*] as detailed in annexure A to this agreement.

Item 2 - Venue

Address : [*complete*]
 Exhibition Area : [*complete*]
 Contact details : [*complete*]

Item 3 - IP Restrictions

[*Organiser to insert any Intellectual Property Right restrictions which apply in respect of the use of the Exhibition (if any)*]

Item 4 - Dates

Arrival Date : [*complete*]
 Commence Installation : [*complete*]
 Commence De-Installation : [*complete*]
 Departure Date : [*complete*]
 Exhibition Period : [*complete*]

Item 5 - Parties responsible for crating, packaging and repacking material

Crating : [Exhibitor]/[Organiser] [*delete as appropriate*]
 Packaging : [Exhibitor]/[Organiser] [*delete as appropriate*]
 Repacking Material : [Exhibitor]/[Organiser] [*delete as appropriate*]

Item 6 - Fee, Payment Schedule, Financial Reporting Arrangements

Fee : [*complete*]
 Payment Schedule : [*complete*]
 Financial Reporting Arrangements: [*Detail reporting requirements to be provided by the Exhibitor to the Organiser and time frames*]

Item 7 - Advertising, promotion and support material

[*Complete details*]

Item 8 - Merchandising Arrangements

[*Set out agreed arrangements in respect of merchandising*]

Item 9 - Sponsorship Guidelines/Responsibility

[Complete. The following sets out a guide which the parties may wish to consider when completing this Item 11]

(a) National Sponsors.

The Organiser reserves the right to appoint a National Sponsor prior to the Exhibition commencing at the Venue.

(b) The National Sponsor must be acknowledged in the form to be advised in all associated materials as follows:

- (i) All printed materials associated with the Exhibition, including school materials, and the invitation to opening night functions.*
- (ii) Advertising and promotional material directly associated with the Exhibition including TV advertising media kits or press releases.*
- (iii) Signage both internal and external for the Exhibition, including banners and billboards.*
- (iv) Where local sponsors are to be acknowledged, they must be distinguished from the National Sponsor by reference to local sponsorship. Greater prominence will be given in all references to the National Sponsor compared to local sponsors.*

(c) Sponsor Benefits

- (i) A number of complimentary family passes and adult passes to be used at the Venue will be issued to the National Sponsor. These passes will have the logo of the Organiser and the National Sponsor and will be numbered.*

NATIONAL SPONSOR: 50 Family passes and 20 Adult passes

- (ii) The National Sponsor is entitled to one free hire of the exhibition space for a private corporate function at a mutually agreed time outside the Exhibitors normal opening hours. The costs of staffing for this function will be borne by the Organiser. Costs such as food and drink will be the responsibility of the National Sponsor.*
- (iii) The National Sponsor will at their discretion be represented at any opening functions. The names and addresses of relevant National Sponsor invitees will be provided by the Organiser to the Exhibitor who will process the invitations to the invitees.]*

Item 10 Organiser Acknowledgment

[The form of acknowledgment is to be specified.]

Item 11 Service of Notices

Name : *[complete]*

Address : *[complete]*

Contact : *[complete]*

Name : *[complete]*

Address : *[complete]*

Contact : *[complete]*

Item 12 Contact times for Exhibitor's representative

[complete]

Item 13 Special Access Arrangements

[complete (if any), others insert "NIL"]

Item 14 Governing Law Jurisdiction

[complete]

Item 15 Confidential Information

[complete]

Annexure A - Specification of Exhibit Items

Exhibition Name:

Components:

Name

Number

Value for Insurance
\$AUD

Annexure B - Sizes, Weights and Handling Requirements

Annexure C - Exhibition Environment and Services to be provided by the Exhibitor

Annexure D - Time and Personnel Required to Install

[Note: Timing for installing/unpacking the Exhibition to be consistent with the dates set out in item 4 of schedule 1]

Annexure E - Condition Report Form

Annexure F - Maintenance and Repair

Annexure G - Maintenance Report

Annexure H - Evaluation Report

Annexure I - Special Conditions
